

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

MATTHEW COTY THEABOLT,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

Case No. 3:12-cv-01627-SU

OPINION AND ORDER

James S. Coon, Swanson Thomas & Coon & Newton, 820 S.W. Second Avenue, Suite 200, Portland, OR 97204. Attorney for Plaintiff.

S. Amanda Marshall, United States Attorney, and Adrian L. Brown, Assistant United States Attorney, United States Attorney's Office, District of Oregon, 1000 S.W. Third Avenue, Suite 600 Portland, OR 97204; Kathryn Ann Miller, Special Assistant United States Attorney, Office of the General Counsel, Social Security Administration, 701 Fifth Avenue, Suite 2900 M/S 901, Seattle, WA 98104. Attorneys for Defendant.

Michael H. Simon, District Judge.

United States Magistrate Judge Patricia Sullivan issued Findings and Recommendation in this case on November 4, 2013. Dkt. 16. Judge Sullivan recommended that the Commissioner of Social Security's ("the Commissioner") decision be reversed and this case be remanded for an award of benefits.

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

The Commissioner timely filed an objection. Dkt. 18. The Commissioner argues that Judge Sullivan erred by: (1) finding that the ALJ erroneously rejected Dr. Daniel Scharf’s medical opinion that Matthew Coty Theabolt (“Theabolt”) would require “special supervision” to maintain work; and (2) failing to conduct a harmless error review to determine if the ALJ’s error likely affected the decision that Theabolt was not disabled. The Court has reviewed *de novo* those portions of Judge Sullivan’s Findings and Recommendation to which the Commissioner has objected, as well as the Commissioner’s objections and Theabolt’s response.

Regarding the Commissioner’s first objection, Judge Sullivan correctly found that the ALJ’s rejection of Dr. Scharf’s opinion was unsupported under either the clear and convincing or substantial evidence standards. Dkt. 16 at 7. Regarding the second objection, Judge Sullivan correctly set out and applied the appropriate legal standard in deciding whether to remand for further proceedings or for immediate payment of benefits. *Id.* at 21-23. The Court agrees with Judge Sullivan’s reasoning and ADOPTS those portions of the Findings and Recommendation.

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report[.]”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* magistrate’s findings

and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

For those portions of Judge Sullivan’s Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Judge Sullivan’s Findings and Recommendation, Dkt. 16.

IT IS SO ORDERED.

DATED this 6th day of January 1014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge